

ER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

WHEELER ZAMICHIELI, Plaintiff

AGAINST

FILED
OCT 23 2012
MICHAEL L. KUNZ, Clerk
By _____ Dep. Clerk

12 3200

POLICE OFFICER, WILLIAM ANDREWS
POLICE OFFICER, MELVIN VICTOR
POLICE COMMISSIONER, CHARLES RAMSEY
MAYOR, MICHAEL NUTTER
THE CITY OF PHILADELPHIA

COMPLAINT
under the
Civil Rights Act,
42 U.S.C. § 1983

Jury Trial: YES

I. PARTIES IN THIS COMPLAINT ABOVE:

- A. PLAINTIFF WHEELER ZAMICHIELI
ID# 67271066
FEDERAL DETENTION CENTER, PHILA
P.O. Box 562
PHILA, PA. 19105

B. DEFENDANT NO. 1, POLICE OFFICER, WILLIAM ANDREWS[#] 3935
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, 14TH DISTRICT POLICE STATION, PHILA, PA.

DEFENDANT NO. 2, POLICE OFFICER, MELVIN VICTOR[#] 5583
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, 14TH DISTRICT POLICE STATION, PHILA, PA.

DEFENDANT NO. 3, POLICE COMMISSIONER, CHARLES RAMSEY
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, POLICE HEADQUARTERS, 8TH & RACE ST. PHILA, PA.

DEFENDANT NO. 4, MAYOR, MICHAEL NUTTER
WHERE EMPLOYED, MAYOR'S OFFICE
ADDRESS, CITY HALL, PHILA, PA.

DEFENDANT NO. 5, THE CITY OF PHILADELPHIA
WHERE EMPLOYED, CITY OF PHILADELPHIA
ADDRESS, PHILA, PA.

II. STATEMENT OF CLAIM:

A. THIS CIVIL ACTION SEEKS MONETARY DAMAGES FOR
THE EXTRAORDINARY INJURIES AND LOSSES SUFFERED
BY PLAINTIFF, WHEELER ZAMICHIELI, BY TWO PHILADELPHIA
POLICE OFFICERS, EMPLOYED BY THE CITY OF PHILADELPHIA.
POLICE OFFICERS, MELVIN VICTOR AND WILLIAM ANDREWS

CONDUCTED A WARRANTLESS SEARCH OF PLAINTIFF, ON 2/20/11 AROUND 2:27^{AM}, ARRESTING HIM FOR ILLEGAL FIREARMS POSSESSION, IN ABSENCE OF PROBABLE CAUSE, VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHTS, WHILE ACTING UNDER THE COLOR OF STATE LAW. THESE TWO OFFICERS UNLAWFUL & UNCONSTITUTIONAL ACTS, WERE UNDER THE DIRECTION OF POLICE COMMISSIONER, CHARLES RAMSEY, AND MAYOR, MICHAEL NUTTER'S "STOP & FRISK" POLICY, WHICH IS A NEW CUSTOM/PRACTICE SIGN INTO LAW, FOR THE PHILADELPHIA POLICE DEPARTMENT.

B. PLAINTIFF'S CASE WAS ADOPTED FROM THE STATE COURT, BY THE UNITED STATES ATTORNEY'S OFFICE, ZANE MEMBER, ON 7/12/11, UNDER INDICTMENT NO. 11-393. ATF AGENT, PAT HENNING INVESTIGATED THE ADOPTION, ARRESTED PLAINTIFF ON 7/13/11, WHILE ASSISTANT U.S. ATTORNEY, ^{VIRGINIA} ~~VICTORIA~~ PAIGE PRATTER PROSECUTED THE CASE, UNDER THE COLOR OF STATE LAW. PLAINTIFF WAS BROUGHT BEFORE THE U.S. DISTRICT COURT, DENIED THE RIGHT TO BAIL, IMPRISONED AND DETAINED FOR 175 DAYS.

C. PLAINTIFF WAS FORCE TO TRIAL 11/21/11, AND EXNORATED OF THE INDICTMENT, BY WAY OF SUPPRESSION HEARING DISTRICT JUDGE, BERLE SCHILLER ON 12/9/11. PLAINTIFF'S UNLAWFUL ARREST & MALICIOUS PROSECUTION, DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHTS, TO BE FREE FROM WARRANTLESS SEARCHES & SEIZURES, FALSE IMPRISONMENTS, DUE PROCESS. THESE ARE VIOLATIONS OF THE U.S. CONSTITUTION, AND STATUTORY AUTHORITIES "OF LAW, IN THE STATE OF PENNSYLVANIA", THAT TOOK PLACE HERE.

III. JURISDICTION AND VENUE

A. THIS ACTION ARISES UNDER THE LAWS OF THE UNITED STATES, AND JURISDICTION IS CONFERRED ON THIS COURT PURSUANT TO 42 U.S.C. § 1983, 28 U.S.C. § 1331 (^{QUESTION} FEDERAL) AND 28 U.S.C. § 1343 (CIVIL RIGHTS). SUPPLEMENTAL JURISDICTION OF THE COURT OVER CLAIMS ARISING UNDER STATE LAW IS INVOKED PURSUANT TO 28 U.S.C. § 1367.

B. VENUE IN THE EASTERN DISTRICT OF PENNSYLVANIA IS APPROPRIATE PURSUANT TO 28 U.S.C. § 1391(b), SINCE IT'S IN THE DISTRICT WHICH MANY DEFENDANTS RESIDE, AND BECAUSE A SUBSTANTIAL PART OF THE EVENTS OR OMISSION GIVING RISE TO THE CLAIMS, OCCURRED WITHIN THE EASTERN DISTRICT OF PENNSYLVANIA.

IV. CONSTITUTIONAL RIGHTS VIOLATION

A. COUNT II, UNDER THE FOURTH AMENDMENT, RATIFIED WITH THE BILL OF RIGHTS IN 1791, PROHIBITING UNREASONABLE SEARCHES AND SEIZURES, AND THE ISSUANCE OF WARRANTS WITHOUT PROBABLE CAUSE.

(1) PLAINTIFF, WHEELER ZAMICHELIS, FOURTH AMENDMENT RIGHTS WERE VIOLATED, WHEN OFFICER WILLIAM ANDREWS AND MELVIN VICTOR, ILLEGALLY SEARCH PLAINTIFF

IN THE ABSENCE OF A WARRENT, AND PROBABLE CAUSE TO ARREST,

(ii) UNDER THE FOURTH AMENDMENT, PROBABLE CAUSE MUST BE ESTABLISHED, BEFORE AN ARREST/SEARCH WARRENT MAY BE ISSUED. IT CANNOT BE ESTABLISHED SIMPLY BY SHOWING THAT, THE OFFICER WHO ^{MADE THE} CHALLENGED ARREST OR SEARCH SUBJECTIVELY BELIEVED HE HAD GROUNDS FOR HIS ACTION.

(iii) OFFICER ANDREWS ATTEMPTED TO JUSTIFY HIS ILLEGAL SEARCH, UNDER THE "PLAIN SIGHT DOCTRINE" WHICH IS AN EXCEPTION TO THE WARRENT REQUIREMENT. HIS JUSTIFICATION WAS LESS PLAUSIBLE BEFORE U.S. DISTRICT JUDGE, BERLE SCHILLER, WHO RULED IN FAVOR OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS BEING VIOLATED BY POLICE. (SEE EXHIBIT A, JUDGES OPINION)

(iv) DUE TO THE DISTRICT COURTS RULING IN FAVOR OF PLAINTIFF IN THE CRIMINAL MATTER, FOR VIOLATION OF HIS 4TH AMENDMENT RIGHTS, IT BARS DEFENDANTS FROM RELITIGATION IN CIVIL PROCEEDINGS, PURSUANT TO THE DOCTRINE OF "COLLATERAL ESTOPPEL & RES JUDICATA." PLAINTIFF IS ENTITLED TO SUMMARY JUDGEMENT.

(v) DEFENDANTS IN THIS SUIT ~~IS~~ ^{ARE} LIABLE JOINTLY & SEVERALLY, FOR CIVIL DAMAGES, WHICH ENTITLES PLAINTIFF, MONETARY DAMAGES.

B. COUNT II, UNDER THE FOURTEENTH AMENDMENT, RATIFIED IN 1868, WHOSE PRIMARY PROVISIONS EFFECTIVELY APPLY THE BILL OF RIGHTS TO THE STATES BY PROHIBITING STATES FROM DENYING DUE PROCESS AND EQUAL PROTECTION AND FROM ABRIDGING THE PRIVILEGES AND IMMUNITIES OF U.S. CITIZENSHIP.

(i) PLAINTIFF ASSERTS THAT, AS A DIRECT VIOLATION OF THE DEFENDANTS ACTION & IN-ACTIONS, IN REGARDS TO HIS CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED PLAINTIFF TO BE DENIED THE RIGHT OF "DUE PROCESS". THE EQUAL PROTECTION RIGHT TO BE FREE FROM A DEPRIVATION OF A PERSONS LIBERTY.

(ii) PLAINTIFF'S LIBERTY WAS TAKEN FROM HIM, WHEN HE WAS ILLEGALLY ARRESTED BY THE DEFENDANTS IN THIS SUIT, PLAINTIFF WAS DEPRIVED OF HIS RIGHT TO BAIL, AND FALSELY IMPRISONED, AT THE FEDERAL DETENTION CENTER IN PHILADELPHIA, FOR 175 DAYS SPENT IN CUSTODY.

(iii) THE DUE PROCESS RIGHTS OF PLAINTIFF WAS FUNDAMENTALLY IMPORTANT AS TO REQUIRE COMPLIANCE WITH DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE.

(iv) DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE, COULD NOT BE EXERCISED BY PLAINTIFF, BECAUSE HE WAS DEPRIVED OF HIS 14TH AMENDMENT RIGHTS AND FALSELY IMPRISONED.

C. COUNT III MALICIOUS PROSECUTION

(i) MAYOR, MICHAEL NUTTER, POLICE COMMISSIONER, CHARLES RAMSEY, AND THE CITY OF PHILADELPHIA, INTENTIONALLY & MALICIOUSLY WITH RECKLESS DISREGARD FOR, AND DELIBERATE INDIFFERENCE TO PLAINTIFF, WHEELER ZAMICHELIS CONSTITUTIONAL RIGHTS, CREATED THE "STOP & FRISK" POLICY.

(ii) THE "STOP & FRISK" POLICY, SIGN INTO CONGRESS, ^{ENACTED} ~~IN-ACTED~~ A CUSTOM/PRACTICE ORDERING AND COMPELLING PHILADELPHIA POLICE TO "STOP & FRISK" CITIZENS OF PHILADELPHIA, DISREGARDING THE CONSTITUTIONAL RIGHTS OF U.S. CITIZENS, AND PROSECUTING THEM, AFTER ILLEGAL ARREST.

(iii) THE AFORESAID DEFENDANTS IN THIS SUIT, VIOLATED PLAINTIFFS 4TH AND 14TH AMENDMENT RIGHTS, BY SIGNING THIS POLICY INTO LAW, WHICH WAS ENFORCED BY POLICE OFFICER, WILLIAM ANDREWS, AND MELVIN VICTOR, WHEN THEY ILLEGALLY SEARCHED AND ARRESTED PLAINTIFF, IN THE ABSENCE OF PROBABLE CAUSE.

(iv) THE "STOP & FRISK" POLICY WAS MADE, IN THE ABSENCE OF ADEQUATE POLICE ^{TRAINING} ~~TRAINING~~. SUCH ABSENCE OF TRAINING, WHILE ATTEMPTING TO PRACTICE THE CUSTOM OF SAID POLICY, CAUSED THE DEFENDANTS / POLICE OFFICERS IN THIS SUIT, TO VIOLATE PLAINTIFF'S

CONSTITUTIONAL RIGHTS.

- (v) UNDER THE DIRECTIONS OF THE DEFENDANTS, MALICIOUSLY PROSECUTING PLAINTIFF WITHOUT REGARD TO GUILT OR INNOCENCE, PROXIMATELY AND DIRECTLY CAUSED PLAINTIFF INJURY, INCLUDING GREAT DISTRESS, PHYSICAL AND MENTAL PAIN, ANGUISH, FEAR, SUFFERING, LOSS OF COMPANIONSHIP AND SELF-EMPLOYED ENTRAPRENEURSHIP.

II. DAMAGES

- (i) THE ACTIONS OF DEFENDANTS JOINTLY & SEVERALLY VIOLATED PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER THE FOURTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE OF THE PENNSYLVANIA STATE CONSTITUTION.
- (ii) AS A DIRECT AND PROXIMATE CAUSE OF DEFENDANTS' ILLEGAL ACTS, PLAINTIFF WAS ILLEGALLY ARRESTED, DENIED BAIL, FALSE IMPRISONED FOR 175 DAYS, THREATEN BY A 15 YEAR PRISON TERM, AND PROSECUTED.
- (iii) PLAINTIFF SUFFERED SEPERATION FROM HIS FAMILY AS WELL AS CHILDREN, GRANDCHILD, AND SPOUSE. PLAINTIFF SUFFERED MENTALLY & PSYCHOLOGICAL STRESS AS A RESULT OF BEING PUBLICLY AND

FALSELY PROSECUTED, FOR WHICH PLAINTIFF IS ENTITLED TO COMPENSATORY, MONETARY, AND PUNITIVE DAMAGES.

VI. LEGAL ARGUMENT

- (i) THE DOCTRINE OF COLLATERAL ESTOPPEL & RES JUDICATA, ^{THIS} BARS DEFENDANTS IN THE 1983 CIVIL ACTION, FROM RELITIGATION OF PLAINTIFF'S CLAIM THAT, HIS FOURTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTIONAL WERE VIOLATED, IN WHICH A FINAL JUDGEMENT BY U.S. DISTRICT JUDGE, BERLE SCHILLER'S OPINION. (SEE EXHIBIT A, OPINION) SUPPORTS THIS ARGUMENT.
- (ii) DUE TO THE FINAL JUDGEMENT BY THE DISTRICT COURT, PLAINTIFF IS ENTITLED TO CIVIL DAMAGES, ON HIS 4TH AMENDMENT VIOLATION CLAIM, WHEREAS, SUMMARY JUDGEMENT IN FAVOR OF PLAINTIFF IS REQUESTED AND REQUIRED.
- (iii) PLAINTIFF ARGUES THAT, THE VIOLATION OF HIS 14TH AMENDMENT RIGHTS BEING VIOLATED, AND FALSE IMPRISONED FOR 175 DAYS, REQUIRES SUMMARY JUDGEMENT.
- (iv) PLAINTIFF ARGUES THAT, HIS DUE PROCESS RIGHTS WERE VIOLATED, IN WHICH THE DEFENDANTS MALICIOUS PROSECUTION, ENTITLES PLAINTIFF, CIVIL DAMAGES, AND SUMMARY JUDGEMENT.

- (v) PLAINTIFF ARGUES THAT, THE DEFENDANTS AS A municipality in this civil action, is not protected from the doctrine of qualified immunity, because their conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known.
- (vi) THE MAYOR, POLICE COMMISSIONER, AND THE CITY OF PHILA., WAS RESPONSIBLE FOR THE CONSTITUTIONAL VIOLATIONS OF PLAINTIFF, BY VIRTUE OF ITS DEFICIENT "STOP & FRISK" POLICY AND PROCEDURES, CONTRARY TO THE CONSTITUTIONAL LAWS.
- (vii) THE "STOP & FRISK" POLICY CARRIED OUT UNDER THE COLOR OF LAW, WAS AND IS A OFFICIAL POLICY WHICH CAUSED AN EMPLOYEE (P/O ANDREWS & MELVIN VICTOR) TO VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS
- (viii) THE "STOP & FRISK" POLICY SHOULDN'T EXIST, BECAUSE THE POLICY MAKER HAS FAILED TO ACT AFFIRMATIVELY, AND TAKE ACTION TO CONTROL THE DEFENDANTS HERE IN THIS SUIT. IT'S INADEQUATE AND EXISTING PRACTICE, RESULTED IN THE VIOLATION OF PLAINTIFFS CONSTITUTIONAL RIGHTS, WHICH CAN BE SAID TO BE, DELIBERATELY INDIFFERENT TO THE NEED. IT FAILED ^{AS} ~~HAS~~ A POLICY ~~HOLDER~~, AND WAS HIGHLY PREDICTABLE CONSEQUENCES OF A FAILURE TO EQUIP POLICE WITH A SPECIFIC TOOL TO

HANDLE RECURRING SITUATION, SUCH A FAILURE OF TRAINING CONTENTS THAT THE LACK WAS A MOTIVATING FORCE BEHIND THE VIOLATIONS OF PLAINTIFF.

VII. RELIEF REQUEST (SUMMARY JUDGEMENT FOR PLAINTIFF)

- (i) AN AWARD OF COMPENSATORY DAMAGES TO PLAINTIFF, IN AN AMOUNT TO BE DETERMINED BY THE COURT
- (ii) AN AWARD OF PUNITIVE DAMAGES TO PLAINTIFF, AGAINST DEFENDANT'S JOINTLY & SEVERALLY, IN AN AMOUNT TO BE DETERMINED BY THE COURT.
- (iii) AN AWARD OF MONETARY DAMAGES, FOR REASONABLE COST & OF ATTORNEY FEES, PURSUANT TO 42 U.S.C. § 1988, TO BE DETERMINED BY THE COURT.
- (iv) AN INJUNCTION RESTRAINING DEFENDANTS, EMPLOYEES, LIASON, FROM RETALIATING AGAINST PLAINTIFF, BY RE-INDICTING OR SUPERCEDING INDICTMENT.

VERIFICATION

I, WHEELER ZAMICHEL, HEREBY VERIFY AND CERTIFY THAT, THE STATEMENTS MADE HEREIN, ARE TRUE AND CORRECT, AND THE INFORMATION GIVEN, IS TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. ANY FALSE STATEMENTS MADE, SUBJECTS ME TO THE PENALTIES OF PERJURY.

DATE: JUNE 4, 2012

Wheeler Zamichel

CERTIFICATE OF SERVICE

I WHEELER ZAMICHEL, HEREBY CERTIFY THAT, A TRUE AND CORRECT COPY OF THE FOREGOING: 42 U.S.C. § 1983 CIVIL ACTION, WITH IN FORMA PAUPERIS REQUEST, AS WELL AS INMATE ACCOUNT INFORMATION, ALONG WITH ATTACHED EXHIBIT A, DISTRICT COURT'S OPINION, WAS SENT VIA UNITED STATES MAIL, PREPAID TO THE CLERK'S OFFICE, FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. I DECLARE UNDER PENALTY OF PERJURY THAT THESE ACTIONS OF PLAINTIFF TRANSPIRED ON THIS 4TH DAY OF JUNE, 2012.

Wheeler Zamicheli
WHEELER ZAMICHEL
67271066
FDC PHILA
P.O. BOX 562
PHILA, PA. 19105

WHEELER ZAMICHIHLI

#67271066

FDC PHILA

P.O. BOX 562

PHILA, PA. 19105



MICHAEL KUNTZ, CLERK OF COURT

JUNE 4, 2012

UNITED STATES DISTRICT COURT

U.S. COURTHOUSE

601 MARKET STREET

PHILA, PA. 19105

RE: PLAINTIFFS 42 U.S.C. § 1983 SUIT

DEAR MR. KUNTZ,

ENCLOSED WITH THIS LETTER ARE THE ORIGINAL
AND CARBON COPIES OF MY 42 U.S.C. § 1983 CIVIL ACTION, ~~WITH WHICH~~
I WAS FORCED TO HAND WRITE, BECAUSE PRISON STAFF ^{WERE} ~~ARE~~ UN-
AVAILABLE TO MAKE COPIES FOR ME. ATTACHED EXHIBIT A, ALONG
WITH A COPY OF MY PRISON ACCOUNT STATEMENT FOR THE PAST
6 MONTHS, AND IN FORMA PAUPERIS. PLEASE DOCKET SAID
FILING, AND SEND ME A DOCKET SHEET, VERIFYING RECEIPT
AND FILING. THANK YOU FOR YOUR TIME & SERVICE.

CC: SELF

RESPECTFULLY
Wheeler Zamichilli

UNITED STATES OF AMERICA v. WHEELER ZAMICHIELI
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
2011 U.S. Dist. LEXIS 141610
CRIMINAL ACTION No. 11-393
December 9, 2011, Decided
December 9, 2011, Filed

Counsel For WHEELER ZAMICHIELI, A/K/A " TROY ZANICHIELI", Defendant:
MICHAEL K. PARLOW, LEAD ATTORNEY, GALLANT & PARLOW, BENSALEM, PA.
For USA, Plaintiff: VIRGINIA PAIGE PRATTER, DEPARTMENT
OF JUSTICE, PHILADELPHIA, PA.
Judges: Berle M. Schiller, J.

Opinion

Opinion by: Berle M. Schiller

Opinion

MEMORANDUM

Schiller, J.

In a one-count indictment, the Government charged Wheeler Zamichieli as a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Philadelphia police officers recovered the weapon underlying the charge during a traffic stop. Zamichieli now moves to suppress the gun that police found in the car he was driving, arguing that the officers' actions constituted an illegal search and seizure in violation of the Fourth Amendment. Zamichieli also seeks to suppress statements he made to the police after he was pulled over. The Court held a hearing on the motion on November 21, 2011. For the reasons that follow, the Court grants the motion.

I. BACKGROUND

At approximately 2:27 in the morning on February 20, 2011, Philadelphia Police Department Officers William Andrews and Melvin Victor were driving back to their district, having responded to several shootings in the adjacent district. (Nov. 21, 2011 Hr'g Tr. at 23-25, 45-46, 53.) At the intersection of Wister Street and West Nedro Avenue, the officers saw a red Chevrolet Impala speed through a stop sign and almost hit their patrol car. (*Id.* at 25, 46.) They turned on their lights and sirens and followed the Impala until it turned the wrong way on a one-way street and stopped. (*Id.* at 25, 46-47.) The officers testified that this was a normal traffic stop and that they were no longer searching for suspects in the shootings at the time. (*Id.* at 30, 53-54.)

Officer Andrews approached the Impala on the passenger side, Officer Victor on the driver side. (*Id.* at 26.) Officer Victor testified that the driver of the Impala, later identified as Zamichieli, turned on the interior dome light as the officers approached. (*Id.* at 47.) Zamichieli denied ever turning on the dome light. (*Id.* at 65.) Zamichieli turned and stuck his head out of the open window on the driver side, resting both arms on the window frame so that his body was facing Officer Victor, and asked

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why he had been pulled over. (*Id.* at 47-48.)

Officer Andrews testified that he scanned the interior of the car as he approached, saw a .38 revolver sitting in plain view on the front passenger seat of the car, and yelled "Gun" to alert his partner. (*Id.* at 26, 47.) Officer Victor removed Zamichieli from the Impala, handcuffed him, and placed him in the back of the patrol car while Officer Andrews retrieved the firearm, which contained five spent shell casings. (*Id.* at 26, 49-50.) Officer Victor never saw where Officer Andrews found the gun. (*Id.* at 57-58.) Both officers testified that Zamichieli was cooperative at all times during the stop and did not make any suspicious or furtive movements. (*Id.* at 26, 36, 56.) The officers issued two citations for Zamichieli's traffic violations. (Gov't's Ex. 1; Nov. 21, 2011 Hr'g Tr. at 51-52.)

At the hearing, Zamichieli disputed Officer Andrews's claim that the gun was on the front passenger seat and testified that the gun was actually secreted under the front passenger seat. (*Id.* at 65, 70.) According to Zamichieli, the officers pulled him out of the car with guns drawn before conducting a search. (*Id.* at 64.) The defense introduced into evidence a picture of the Impala, allegedly taken the month before the traffic stop, showing that the car had tinted windows. (Def.'s Ex. 2; Nov. 21, 2011 Hr'g Tr. at 63.) Zamichieli also testified that the car doors and passenger-side window were closed when the officers approached. (*Id.* at 65.) Neither officer could remember whether the windows were tinted or whether the passenger-side window was up or down during the traffic stop. (*Id.* at 28-29, 38, 57-58.) Officer Victor confirmed that he did not ask for a driver's license, registration, or proof of insurance while Zamichieli was in the car. (*Id.* at 59-60.)

II. STANDARD OF REVIEW

The movant bears the burden of proving, by a preponderance of the evidence, that the evidence in question should be suppressed. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) (citing *United States v. Acosta*, 965 F.2d 1248, 1256 n. 9 (3d Cir. 1992)). "However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." *Johnson*, 63 F.3d at 245.

III. DISCUSSION

The initial traffic stop was lawful. "It is well-established that a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations." *United States v. Moorefield*, 111 F.3d 10, 12 (3d Cir. 1997). In this case, the officers observed Zamichieli speed through a stop sign and drive the wrong way down a one-way street, both traffic violations under Pennsylvania law. See 75 Pa. Cons. Stat. §§ 3323(b); 3308(b).

Nonetheless, Zamichieli argues that the search and seizure of the gun during the traffic stop violated his Fourth Amendment rights. Weighing the evidence presented, the Court finds the officers' version of the story implausible. There was no reason for Zamichieli to turn on the dome light when he had already opened the driver-side window to speak with Officer Victor and was not asked to provide his paperwork-nor is it likely that Zamichieli would do so with a gun sitting in plain view on the front passenger seat. Without the dome light on, it would be nearly impossible for Officer Andrews to see a gun on the front seat through a closed, tinted window in the dark of night. The Court therefore credits Zamichieli's testimony that the gun was under the front passenger seat. Because the gun was not in plain view, the only way for the officers to find it was to search the vehicle. Absent an applicable exception, the officers were not permitted to conduct a warrantless search of the Impala without probable cause to believe it contained evidence of criminal activity. See *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002). The Government has not met its burden of showing that the search was reasonable.

The Government argues that once Officer Andrews saw the gun in plain view, the officers had probable cause to arrest Zamichieli for carrying a firearm without a license and, as a result, they were authorized to conduct a search incident to the arrest. (Gov't's Opp. to Def.'s Mot. to Suppress Physical Evidence and Statements and Mot. in Limine Seeking Severance at 7.) "Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." *Wilson v. Russo*, 212 F.3d 781, 789 (3d Cir. 2000) (internal quotation marks omitted). The search of "a vehicle incident to a recent occupant's arrest" is lawful "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search," or "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 1719, 173 L. Ed. 2d 485 (2009). Zamichieli was not arrested for traffic violations, but rather for carrying a firearm without a license. Because the Court has found that the gun was not in plain view, the officers only had probable cause to arrest Zamichieli for an offense related to the gun after searching the vehicle. Therefore, the exception to the probable cause requirement for searches incident to arrest does not apply because there was no probable cause to arrest prior to the search. See *Knowles v. Iowa*, 525 U.S. 113, 118-19, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (holding that the exception does not apply when a police officer has probable cause to believe the defendant has committed a traffic offense but only issues a citation); *Smith v. Ohio*, 494 U.S. 541, 543, 110 S. Ct. 1288, 108 L. Ed. 2d 464 (1990) ("[The exception] does not permit the police to search any citizen without a warrant or probable cause so long as an arrest immediately follows.").

During a traffic stop, an officer is also entitled to "conduct a search of the passenger compartment, if he has a reasonable suspicion that the occupants might be armed and dangerous." *United States v. Bonner*, 363 F.3d 213, 216 (3d Cir. 2004) (citing *Michigan v. Long*, 463 U.S. 1032, 1049-50, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983)). "The court measures the reasonableness of the officer's suspicion by taking into account the totality of the circumstances." *United States v. Focareta*, 283 F. App'x 78, 83 (3d Cir. 2008) While the test is an objective one, "[t]he searching officer's subjective beliefs are part of the totality of the circumstances that the court examines when determining whether there was an objective basis" for the search. *Id.* at 84. Officers Andrews and Victor testified that this was a normal traffic stop and that Zamichieli was cooperative and made no suspicious or furtive movements. Without any objective basis to believe that Zamichieli was armed and dangerous, the officers lacked reasonable suspicion to search the Impala. Accordingly, this exception to the probable cause requirement is also inapplicable.

Because the search was conducted in violation of Zamichieli's Fourth Amendment rights, all evidence obtained in connection with the search, including the gun and any statements made by Zamichieli following the search, must be suppressed as fruit of the poisonous tree. See *Wong Sun v. United States*, 371 U.S. 471, 487-88, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

IV. CONCLUSION

The weapon underlying the charge against Zamichieli was obtained through an illegal search. As a result, the motion to suppress must be granted. An appropriate Order will be docketed separately.

ORDER

AND NOW, this 9th day of **December, 2011**, upon consideration of Defendant's Motion to Suppress Physical Evidence and Statements and the Government's responses thereto, following a hearing conducted on November 21, 2011, and for the reasons provided in this Court's Memorandum dated December 9, 2011, it is hereby **ORDERED** that the motion (Document No. 20) is **GRANTED**.

BY THE COURT:

/s/ Berle M. Schiller

Berle M. Schiller, J.

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B. DEFENDANT NO. 1, POLICE OFFICER, WILLIAM ANDREWS #3935
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, 14TH DISTRICT POLICE STATION, PHILA, PA.

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POLICE OFFICERS, MELVIN VICTOR AND WILLIAM ANDREWS

CONDUCTED A WARRANTLESS SEARCH OF PLAINTIFF, ON 2/20/11 AROUND 2:27^{AM}, ARRESTING HIM FOR ILLEGAL FIREARMS POSSESSION, IN ABSENCE OF PROBABLE CAUSE, VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHTS, WHILE ACTING UNDER THE COLOR OF STATE LAW. THESE TWO OFFICERS UNLAWFUL & UNCONSTITUTIONAL ACTS, WERE UNDER THE DIRECTION OF POLICE COMMISSIONER, CHARLES RAMSEY, AND MAYOR, MICHAEL NUTTER'S "STOP & FRISK" POLICY, WHICH IS A NEW CUSTOM / PRACTICE SIGN INTO LAW, FOR THE PHILADELPHIA POLICE DEPARTMENT.

B. PLAINTIFF'S CASE WAS ADOPTED FROM THE STATE COURT, BY THE UNITED STATES ATTORNEY'S OFFICE, ZANE MEMBER, ON 7/12/11, UNDER INDICTMENT NO. 11-393. ATF AGENT, PAT HENNING INVESTIGATED THE ADOPTION, ARRESTED PLAINTIFF ON 7/13/11, WHILE ASSISTANT U.S. ATTORNEY, ^{VIRGINIA} ~~VICTORIA~~ PAIGE PRATTER PROSECUTED THE CASE, UNDER THE COLOR OF STATE LAW. PLAINTIFF WAS BROUGHT BEFORE THE U.S. DISTRICT COURT, DENIED THE RIGHT TO BAIL, IMPRISONED AND DETAINED FOR 175 DAYS.

C. PLAINTIFF WAS FORCED TO TRIAL 11/21/11, AND EXNORATED OF THE INDICTMENT, BY WAY OF SUPPRESSION HEARING DISTRICT JUDGE, BERLE SCHILLER ON 12/9/11. PLAINTIFF'S UNLAWFUL ARREST & MALICIOUS PROSECUTION, DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHTS, TO BE FREE FROM WARRANTLESS SEARCHES & SEIZURES, FALSE IMPRISONMENTS, DUE PROCESS. THESE ARE VIOLATIONS OF THE U.S. CONSTITUTION, AND STATUTORY AUTHORITIES OF LAW, IN THE STATE OF PENNSYLVANIA, THAT TOOK PLACE HERE

III. JURISDICTION AND VENUE

A. THIS ACTION ARISES UNDER THE LAWS OF THE UNITED STATES, AND JURISDICTION IS CONFERRED ON THIS COURT PURSUANT TO 42 U.S.C. § 1983, 28 U.S.C. § 1331 (^{QUESTION} FEDERAL) AND 28 U.S.C. § 1343 (CIVIL RIGHTS). SUPPLEMENTAL JURISDICTION OF THE COURT OVER CLAIMS ARISING UNDER STATE LAW IS INVOKED PURSUANT TO 28 U.S.C. § 1367.

B. VENUE IN THE EASTERN DISTRICT OF PENNSYLVANIA IS APPROPRIATE PURSUANT TO 28 U.S.C. § 1391(b), SINCE IT'S IN THE DISTRICT WHICH MANY DEFENDANTS RESIDE, AND BECAUSE A SUBSTANTIAL PART OF THE EVENTS OR OMISSION GIVING RISE TO THE CLAIMS, OCCURRED WITHIN THE EASTERN DISTRICT OF PENNSYLVANIA.

IV. CONSTITUTIONAL RIGHTS VIOLATION

A. COUNT II, UNDER THE FOURTH AMENDMENT, RATIFIED WITH THE BILL OF RIGHTS IN 1791, PROHIBITING UNREASONABLE SEARCHES AND SEIZURES, AND THE ISSUANCE OF WARRANTS WITHOUT PROBABLE CAUSE.

(1) PLAINTIFF, WHEELER ZAMICHELIS, FOURTH AMENDMENT RIGHTS WERE VIOLATED, WHEN OFFICER WILLIAM ANDREWS AND MELVIN VICTOR, ILLEGALLY SEARCH PLAINTIFF

IN THE ABSENCE OF A WARRENT, AND PROBABLE CAUSE TO ARREST.

- (ii) UNDER THE FOURTH AMENDMENT, PROBABLE CAUSE MUST BE ESTABLISHED, BEFORE AN ARREST/SEARCH WARRENT MAY BE ISSUED. IT CANNOT BE ESTABLISHED SIMPLY BY SHOWING THAT, THE OFFICER WHO ^{MADE THE} CHALLENGED ARREST OR SEARCH SUBJECTIVELY BELIEVED HE HAD GROUNDS FOR HIS ACTION.
- (iii) OFFICER ANDREWS ATTEMPTED TO JUSTIFY HIS ILLEGAL SEARCH, UNDER THE "PLAIN SIGHT DOCTRINE" WHICH IS AN EXCEPTION TO THE WARRENT REQUIREMENT. HIS JUSTIFICATION WAS LESS PLAUSIBLE BEFORE U.S. DISTRICT JUDGE, BERLE SCHILLER, WHO RULED IN FAVOR OF PLAINTIFFS' FOURTH AMENDMENT RIGHTS BEING VIOLATED BY POLICE. (SEE EXHIBIT A, JUDGES OPINION)
- (iv) DUE TO THE DISTRICT COURTS RULING IN FAVOR OF PLAINTIFF IN THE CRIMINAL MATTER, FOR VIOLATION OF HIS 4TH AMENDMENT RIGHTS, IT BARS DEFENDANTS FROM RELITIGATION IN CIVIL PROCEEDINGS, PURSUANT TO THE DOCTRINE OF "COLLATERAL ESTOPPEL & RES JUDICATA." PLAINTIFF IS ENTITLED TO SUMMARY JUDGEMENT.
- (v) DEFENDANTS IN THIS SUIT ~~IS~~ ^{ARE} LIABLE JOINTLY & SEVERALLY, FOR CIVIL DAMAGES, WHICH ENTITLES PLAINTIFF, MONETARY DAMAGES.

B. COUNT II, UNDER THE FOURTEENTH AMENDMENT, RATIFIED IN 1868, WHOSE PRIMARY PROVISIONS EFFECTIVELY APPLY THE BILL OF RIGHTS TO THE STATES BY PROHIBITING STATES FROM DENYING DUE PROCESS AND EQUAL PROTECTION AND FROM ABRIDGING THE PRIVILEGES AND IMMUNITIES OF U.S. CITIZENSHIP.

- (i) PLAINTIFF ASSERTS THAT, AS A DIRECT VIOLATION OF THE DEFENDANT'S ACTION & IN-ACTIONS, IN REGARDS TO HIS CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED "PLAINTIFF TO BE DENIED THE RIGHT OF "DUE PROCESS". THE EQUAL PROTECTION RIGHT TO BE FREE FROM A DEPRIVATION OF A PERSONS LIBERTY.
- (ii) PLAINTIFF'S LIBERTY WAS TAKEN FROM HIM, WHEN HE WAS ILLEGALLY ARRESTED BY THE DEFENDANTS IN THIS SUIT. PLAINTIFF WAS DEPRIVED OF HIS RIGHT TO BAIL, AND FAISLY IMPRISONED, AT THE FEDERAL DETENTION CENTER IN PHILADELPHIA, FOR 175 DAYS SPENT IN CUSTODY.
- (iii) THE DUE PROCESS RIGHTS OF PLAINTIFF WAS FUNDAMENTLY IMPORTANT AS TO REQUIRE COMPLIANCE WITH DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE.
- (iv) DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE, COULD NOT BE EXCERSIZED BY PLAINTIFF, BECAUSE HE WAS DEPRIVED OF HIS 14TH AMENDMENT RIGHTS AND FALSELY IMPRISONED.

C. COUNT III MALICIOUS PROSECUTION

- (i) MAYOR, MICHAEL NUTTER, POLICE COMMISSIONER, CHARLES RAMSEY, AND THE CITY OF PHILADELPHIA, INTENTIONALLY & MALICIOUSLY WITH RECKLESS DISREGARD FOR, AND DELIBERATE INDIFFERENCE TO PLAINTIFF, WHEELER ZAMICHELIS CONSTITUTIONAL RIGHTS, CREATED THE "STOP & FRISK" POLICY.
- (ii) THE "STOP & FRISK" POLICY, SIGN INTO CONGRESS, ^{ENACTED} ~~IN ACTED~~ A CUSTOM/PRACTICE ORDERING AND COMPELLING PHILADELPHIA POLICE TO "STOP & FRISK" CITIZENS OF PHILADELPHIA, DISREGARDING THE CONSTITUTIONAL RIGHTS OF U.S. CITIZENS, AND PROSECUTING THEM, AFTER ILLEGAL ARREST.
- (iii) THE AFORESAID DEFENDANTS IN THIS SUIT, VIOLATED PLAINTIFFS 4TH AND 14TH AMENDMENT RIGHTS, BY SIGNING THIS POLICY INTO LAW, WHICH WAS ENFORCED BY POLICE OFFICER, WILLIAM ANDREWS, AND MELVIN VICTOR, WHEN THEY ILLEGALLY SEARCHED AND ARRESTED PLAINTIFF, IN THE ABSENCE OF PROBABLE CAUSE.
- (iv) THE "STOP & FRISK" POLICY WAS MADE, IN THE ABSENCE OF ADEQUATE POLICE ^{TRAINING} ~~TRAINING~~. SUCH ABSENCE OF TRAINING, WHILE ATTEMPTING TO PRACTICE THE CUSTOM OF SAID POLICY, CAUSED THE DEFENDANTS/ POLICE OFFICERS IN THIS SUIT, TO VIOLATE PLAINTIFF'S

CONSTITUTIONAL RIGHTS.

- (V) UNDER THE DIRECTIONS OF THE DEFENDANTS, MALICIOUSLY PROSECUTING PLAINTIFF WITHOUT REGARD TO GUILT OR INNOCENCE, PROXIMATELY AND DIRECTLY CAUSED PLAINTIFF INJURY, INCLUDING GREAT DISTRESS, PHYSICAL AND MENTAL PAIN, ANGUISH, FEAR, SUFFERING, LOSS OF COMPANIONSHIP AND SELF-EMPLOYED ENTRAPRENEURSHIP.

II. DAMAGES

- (i) THE ACTIONS OF DEFENDANTS JOINTLY & SEVERALLY VIOLATED PLAINTIFF'S CONSTITUTIONAL AND CIVIL RIGHTS UNDER THE FOURTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE OF THE PENNSYLVANIA STATE CONSTITUTION.
- (ii) AS A DIRECT AND PROXIMATE CAUSE OF DEFENDANTS' ILLEGAL ACTS, PLAINTIFF WAS ILLEGALLY ARRESTED, DENIED BAIL, FALSE IMPRISONED FOR 175 DAYS, THREATEN BY A 15 YEAR PRISON TERM, AND PROSECUTED.
- (iii) PLAINTIFF SUFFERED SEPERATION FROM HIS FAMILY AS WELL AS CHILDREN, GRANDCHILD, AND SPOUSE. PLAINTIFF SUFFERED MENTALLY & PSYCHOLOGICAL STRESS AS A RESULT OF BEING PUBLICLY AND

FALSELY PROSECUTED, FOR WHICH PLAINTIFF IS ENTITLED TO COMPENSATORY, MONETARY, AND PUNITIVE DAMAGES.

VI. LEGAL ARGUMENT

- (i) THE DOCTRINE OF COLLATERAL ESTOPPEL & RES JUDICATA, BARS DEFENDANTS IN ^{THIS} 1983 CIVIL ACTION, FROM RELITIGATION OF PLAINTIFF'S CLAIM THAT, HIS FOURTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTIONAL WERE VIOLATED, IN WHICH A FINAL JUDGEMENT BY U.S. DISTRICT JUDGE, BERLE SCHILLER'S OPINION. (SEE EXHIBIT A, OPINION) SUPPORTS THIS ARGUMENT.
- (ii) DUE TO THE FINAL JUDGEMENT BY THE DISTRICT COURT, PLAINTIFF IS ENTITLED TO CIVIL DAMAGES, ON HIS 4TH AMENDMENT VIOLATION CLAIM, WHEREAS, SUMMARY JUDGEMENT IN FAVOR OF PLAINTIFF IS REQUESTED AND REQUIRED.
- (iii) PLAINTIFF ARGUES THAT, THE VIOLATION OF HIS 14TH AMENDMENT RIGHTS BEING VIOLATED, AND FALSE IMPRISONED FOR 175 DAYS, REQUIRES SUMMARY JUDGEMENT.
- (iv) PLAINTIFF ARGUES THAT, HIS DUE PROCESS RIGHTS WERE VIOLATED, IN WHICH THE DEFENDANTS MALICIOUS PROSECUTION, ENTITLES PLAINTIFF, CIVIL DAMAGES, AND SUMMARY JUDGEMENT.

- (v) PLAINTIFF ARGUES THAT, THE DEFENDANTS AS A MUNICIPALITY IN THIS CIVIL ACTION, IS NOT PROTECTED FROM THE DOCTRINE OF QUALIFIED IMMUNITY, BECAUSE THEIR CONDUCT VIOLATED CLEARLY ESTABLISHED STATUTORY OR CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN.
- (vi) THE MAYOR, POLICE COMMISSIONER, AND THE CITY OF PHILA., WAS RESPONSIBLE FOR THE CONSTITUTIONAL VIOLATIONS OF PLAINTIFF, BY VIRTUE OF ITS DEFICIENT "STOP & FRISK" POLICY AND PROCEDURES, CONTRARY TO THE CONSTITUTIONAL LAWS.
- (vii) THE "STOP & FRISK" POLICY CARRIED OUT UNDER THE COLOR OF LAW, WAS AND IS A OFFICIAL POLICY WHICH CAUSED AN EMPLOYEE (P/O ANDREWS & MELVIN VICTOR) TO VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS
- (viii) THE "STOP & FRISK" POLICY SHOULDN'T EXIST, BECAUSE THE POLICY MAKER HAS FAILED TO ACT AFFIRMATIVELY, AND TAKE ACTION TO CONTROL THE DEFENDANTS HERE IN THIS SUIT. ITS INADEQUATE AND EXISTING PRACTICE, RESULTED IN THE VIOLATION OF PLAINTIFFS CONSTITUTIONAL RIGHTS, WHICH CAN BE SAID TO BE, DELIBERATELY INDIFFERENT TO THE NEED. IT FAILED ^{AS} ~~HAS~~ A POLICY ~~HOLDER~~, AND WAS HIGHLY PREDICTABLE CONSEQUENCE OF A FAILURE TO EQUIP POLICE WITH A SPECIFIC TOOL TO
- (10)

HANDLE RECURRING SITUATION, SUCH A FAILURE OF TRAINING CONTENDS THAT THE LACK WAS A MOTIVATING FORCE BEHIND THE VIOLATIONS OF PLAINTIFF.

VII RELIEF REQUEST (SUMMARY JUDGEMENT FOR PLAINTIFF)

- (i) AN AWARD OF COMPENSATORY DAMAGES TO PLAINTIFF, IN AN AMOUNT TO BE DETERMINED BY THE COURT
- (ii) AN AWARD OF PUNITIVE DAMAGES TO PLAINTIFF, AGAINST DEFENDANTS JOINTLY & SEVERALLY, IN AN AMOUNT TO BE DETERMINED BY THE COURT.
- (iii) AN AWARD OF MONETARY DAMAGES, FOR REASONABLE COST & OF ATTORNEY FEES, PURSUANT TO 42 U.S.C. § 1988, TO BE DETERMINED BY THE COURT.
- (iv) AN INJUNCTION RESTRAINING DEFENDANTS, EMPLOYEES, LIASON, FROM RETALIATING AGAINST PLAINTIFF, BY RE-INDICTING OR SUPERCEDING INDICTMENT.

VERIFICATION

I, WHEELER ZAMICHEL, HEREBY VERIFY AND CERTIFY THAT, THE STATEMENTS MADE HEREIN, ARE TRUE AND CORRECT, AND THE INFORMATION GIVEN, IS TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. ANY FALSE STATEMENTS MADE, SUBJECTS ME TO THE PENALTIES OF PERJURY.

DATE: JUNE 4, 2012

Wheeler Zamichel

CERTIFICATE OF SERVICE

I WHEELER ZAMICHEL, HEREBY CERTIFY THAT, A TRUE AND CORRECT COPY OF THE FOREGOING: 42 U.S.C. § 1983 CIVIL ACTION, WITH IN FORMA PAUPERIS REQUEST, AS WELL AS INMATE ACCOUNT INFORMATION, ALONG WITH ATTACHED EXHIBIT A, DISTRICT COURT'S OPINION, WAS SENT VIA UNITED STATES MAIL, PREPAID TO THE CLERK'S OFFICE, FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. I DECLARE UNDER PENALTY OF PERJURY THAT THESE ACTIONS OF PLAINTIFF TRANSPIRED ON THIS 4TH DAY OF JUNE, 2012

Wheeler Zamicheli
WHEELER ZAMICHEL
67271066
FDC PHILA
P.O. BOX 562
PHILA, PA. 19105

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

WHEELER ZAMICHELII, Plaintiff

AGAINST

POLICE OFFICER, WILLIAM ANDREWS
POLICE OFFICER, MELVIN VICTOR
POLICE COMMISSIONER, CHARLES KANISLY
MAYOR, MICHAEL NUTTER
THE CITY OF PHILADELPHIA

COMPLAINT
under the
CIVIL RIGHTS ACT,
42 U.S.C. § 1983

3-AL/ST-1: YES

I. PARTIES IN THIS COMPLAINT ABOVE:

- A. PLAINTIFF WHEELER ZAMICHELII
ID# 67271066
FEDERAL DETENTION CENTER, PHILA
P.O. Box 562
PHILA, PA. 17105

B. DEFENDANT NO. 1, POLICE OFFICER, WILLIAM ANDREWS #3935
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, 14TH DISTRICT POLICE STATION, PHILA, PA.

DEFENDANT NO. 2, POLICE OFFICER, MELVIN VICTOR #5583
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, 14TH DISTRICT POLICE STATION, PHILA, PA.

DEFENDANT NO. 3, POLICE COMMISSIONER, CHARLES RANNEY
WHERE EMPLOYED, PHILADELPHIA POLICE DEPARTMENT
ADDRESS, POLICE HEADQUARTERS, 1ST & RACE ST. PHILA, PA.

DEFENDANT NO. 4, MAYOR, MICHAEL NUTTER
WHERE EMPLOYED, MAYOR'S OFFICE
ADDRESS, CITY HALL, PHILA, PA.

DEFENDANT NO. 5, THE CITY OF PHILADELPHIA
WHERE EMPLOYED, CITY OF PHILADELPHIA
ADDRESS, PHILA, PA.

II. STATEMENT OF CLAIM:

A. THIS CIVIL ACTION SEEKS MONETARY DAMAGES FOR
THE EXTRAORDINARY INJURIES AND LOSSES SUFFERED
BY PLAINTIFF, WHEELER ZAMICHEL, BY TWO PHILADELPHIA
POLICE OFFICERS, EMPLOYED BY THE CITY OF PHILADELPHIA.
POLICE OFFICERS, MELVIN VICTOR AND WILLIAM ANDREWS

CONDUCTED A WARRANTLESS SEARCH OF PLAINTIFF, ON 2/20/11 AROUND 2:27^{AM}, ARRESTING HIM FOR ILLEGAL FIREARMS POSSESSION, IN ABSENCE OF PROBABLE CAUSE, VIOLATING PLAINTIFF'S CONSTITUTIONAL RIGHTS, WHILE ACTING UNDER THE COLOR OF STATE LAW. THESE TWO OFFICERS UNLAWFUL & UNCONSTITUTIONAL ACTS, WERE UNDER THE DIRECTION OF POLICE COMMISSIONER, CHARLES RAMSEY, AND MAYOR, MICHAEL NUTTER'S "STOP & FRISK" POLICY, WHICH IS A NEW CUSTOM/PRACTICE SIGNIFIED LAW, FOR THE PHILADELPHIA POLICE DEPARTMENT.

B. PLAINTIFF'S CASE WAS ADOPTED FROM THE STATE COURT, BY THE UNITED STATES ATTORNEY'S OFFICE, ZANE MUMFORD, ON 7/12/11, UNDER INDICTMENT NO. 11-313. ATF AGENT, PAT HENNING INVESTIGATED THE ADOPTION, ARRESTED PLAINTIFF ON 7/13/11, WHILE ASSISTANT U.S. ATTORNEY, ~~PAUL PRATTER~~ ^{VIRGINIA} PAUL PRATTER PROSECUTED THE CASE, UNDER THE COLOR OF STATE LAW. PLAINTIFF WAS BROUGHT BEFORE THE U.S. DISTRICT COURT, DENIED THE RIGHT TO BAIL, IMPRISONED AND DETAINED FOR 175 DAYS.

C. PLAINTIFF WAS FORCE TRIED 11/21/11, AND EXORATED OF THE INDICTMENT, BY WAY OF SUPPRESSION HEARING DISTRICT JUDGE, BERLE SCHILLER ON 12/1/11. PLAINTIFF'S UNLAWFUL ARREST & MALICIOUS PROSECUTION, DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHTS, TO BE FREE FROM WARRANTLESS SEARCHES & SEIZURES, FALSE IMPRISONMENTS, DUE PROCESS. THESE ARE VIOLATIONS OF THE U.S. CONSTITUTION, AND STATUTORY AUTHORITY, OF LAW, IN THE COLOR OF "LOCAL/INLAND" ~~PHILADELPHIA~~ ^{PHILADELPHIA} POLICE DEPT.

III. JURISDICTION AND VENUE

A. THIS ACTION ARISES UNDER THE LAWS OF THE UNITED STATES, AND JURISDICTION IS CONFERRED ON THIS COURT PURSUANT TO 42 U.S.C. § 1983, 28 U.S.C. § 1331 (QUESTIONS OF FEDERALITY) AND 28 U.S.C. § 1342 (CIVIL RIGHTS). SUPPLEMENTAL JURISDICTION OF THE COURT OVER CLAIMS ARISING UNDER STATE LAW IS INVOKED PURSUANT TO 28 U.S.C. § 1367.

B. VENUE IN THE EASTERN DISTRICT OF PENNSYLVANIA IS APPROPRIATE PURSUANT TO 28 U.S.C. § 1371(b), SINCE IT IS IN THE DISTRICT WHERE MANY ALLEGEDLY TOOK PLACE, AND WHERE A SUBSTANTIAL PART OF THE EVENTS OR TRANSACTIONS GIVING RISE TO THE CLAIMS, OCCURRED, WITHIN THE EASTERN DISTRICT OF PENNSYLVANIA.

IV. CONSTITUTIONAL RIGHTS VIOLATION

A. COUNT I, VIOLATION OF THE FOURTH AMENDMENT, RATIFIED WITH THE BILL OF RIGHTS IN 1791, PROHIBITING UNREASONABLE SEARCHES AND SEIZURES, AND THE ISSUANCE OF WARRANTS WITHOUT PROBABLE CAUSE.

TO ALLEGEDLY VIOLATE 28 U.S.C. § 1983, IT MUST BE SHOWN THAT THE DEFENDANT ACTED UNDER COLOR OF STATE LAW AND THAT THE ALLEGED VIOLATION OF THE CONSTITUTION WAS A DIRECT RESULT OF SUCH ACTION.

(i) THE PROBABLE CAUSE OF A WARRANT, AND PROBABLE CAUSE
TO ARREST.

(ii) UNDER THE FOURTH AMENDMENT, PROBABLE CAUSE
MUST BE ESTABLISHED, BEFORE AN ARREST/SEARCH
WARRANT MAY BE ISSUED. IT CANNOT BE ESTABLISHED
SIMPLY BY SHOWING THAT, THE SET OR OTHER ^{MADE THE} CHALLENGED
ARREST OR SEARCH SUBJECT VELY BELIEVED HE WAS
SUSPECTED FOR THE ACTION.

(iii) OFFICER ARROWOOD ATTEMPTED TO JUSTIFY HIS ILLICAL
SEARCH, UNDER THE "PLAIN VIEW DOCTRINE" WHICH IS
AN EXCEPTION TO THE CURRENT REQUIREMENT. HIS
JUSTIFICATION UNDER THIS PLAUSIBLE REFERS U.S.
DISTRICT JUDGE, SINGLE CHALLENGE WITH NO OTHER
EVIDENCE OF PLAIN VIEW. IT WITH AMENDMENT RIGHTS
BEING VIOLATED BY POLICE. (SEE EXHIBIT A, JUDGES OPINION)

(iv) EVEN IF THE DISTRICT JUDGE RULING IN FAVOR OF
PLAINTIFF IN THE CRIMINAL MATTER, THE VIOLATION
OF THE 4TH AMENDMENT CANNOT BE REMEDIED.
FROM RECOGNITION OF CIVIL PROCEEDINGS, PLAINANT
IS THE VIOLATION OF "COLLATERAL DAMAGE / IS
REMEDIED" PLAINANT IS A POLICE IN SUMMARY, THEREFORE.

(v) THE PLAINANT IS NOT ^{ARE} CIVILLY SUITABLE, NOR SHALL
BE CIVIL DAMAGES, WHICH INCLUDES PLAINANT, SUFFERING
DAMAGES.

B. COUNT II, UNDER THE FIFTEENTH AMENDMENT, THAT DOES
 VIOLATE, THAT VIOLATES / THAT DOES NOT EFFECTIVELY APPLY
 THE BILL OF RIGHTS OF THE STATES BY PROHIBITING STATES
 FROM DEPRIVING ONE PERSONS NATIONAL PROTECTION AND
 FROM DEPRIVING ONE PERSONS RIGHTS AND PRIVILEGES OF
 U.S. CITIZENSHIP.

(i) PLAINTEFFS ALLEGES THAT, IN A DIRECT VIOLATION OF
 THE CONSTITUTION ACTED BY VIOLATING, IT VIOLATES TO
 THE CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED BY
 PLAINTEFFS TO BE VIOLATED, IN VIOLATION OF THE CONSTITUTION.
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 VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION.

(ii) PLAINTEFF ALLEGES THAT, IN A DIRECT VIOLATION OF
 THE CONSTITUTION ACTED BY VIOLATING, IT VIOLATES TO
 THE CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED BY
 PLAINTEFFS TO BE VIOLATED, IN VIOLATION OF THE CONSTITUTION.
 THE VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION.

(iii) PLAINTEFF ALLEGES THAT, IN A DIRECT VIOLATION OF
 THE CONSTITUTION ACTED BY VIOLATING, IT VIOLATES TO
 THE CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED BY
 PLAINTEFFS TO BE VIOLATED, IN VIOLATION OF THE CONSTITUTION.
 THE VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION.

(iv) PLAINTEFF ALLEGES THAT, IN A DIRECT VIOLATION OF
 THE CONSTITUTION ACTED BY VIOLATING, IT VIOLATES TO
 THE CONSTITUTIONAL RIGHTS BEING VIOLATED, CAUSED BY
 PLAINTEFFS TO BE VIOLATED, IN VIOLATION OF THE CONSTITUTION.
 THE VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION, IN VIOLATION OF THE CONSTITUTION.

- (4) When the subject is a full-time, salaried employee of the Government, the Government is not required to pay the cost of the medical insurance for the employee's family. The Government is required to pay the cost of the medical insurance for the employee's family only if the employee is a full-time, salaried employee of the Government and the employee's family is not covered by any other health insurance plan.

(1) THE ACTING ATTORNEY GENERAL, JOSEPH R. QUINN, ADVISED ALL STATES OF THE NATIONAL ANTI-CRIMINAL RINGS IN THE UNITED STATES, AND THE ATTORNEY GENERAL OF THE UNITED STATES, EDWARD BREWER, AND ATTORNEY OF THE PENNSYLVANIA STATE CONSTITUTION.

- (ii) Is a direct and proximate cause of death and
actual death, whether or not actually witnessed,
caused by a fall from a height, or death by
other means, or death by other means, and proximate.

- (16) PLANTER ASSOCIATED OPERATED BY THE FIRM OF
J. WILLIAMSON & CO. LTD. LONDON, ENGLAND.
PLANTER ASSOCIATED OPERATED BY THE FIRM OF
J. WILLIAMSON & CO. LTD. LONDON, ENGLAND.

- (i) MAJORITARIAN VIEW THAT, THE CONSENSUS IS A
NECESSARY ELEMENT FOR THE POLITICAL
ORDER AND NATIONAL & SOCIAL COMMUNITY, BECAUSE
THEIR CONFLICT NEGATES ECONOMIC & POLITICAL STABILITY
& NATIONAL UNITY. IT TAKES A REASONABLE PERIOD
TO REACH CONSENSUS.
- (ii) THE MAJOR POLICY CONSIDERER AND THE CITY OF PHILA.
WAS RESPONSIBLE FOR THE CONSTITUTIONAL QUESTION OF
REINSTATEMENT OF THE DEFICIENT "STOP & CHECK"
POLICY AND PROCEDURES, CONTAINED IN THE CONSTITUTIONAL
LAW.
- (iii) THE "STOP & CHECK" POLICY CARRIED OUT UNDER THE COLOR
OF LAW, WAS ANOTHER NATIONAL POLICY WHICH
CAME TO AN END IN 1968 (THE NATIONAL GOVERNMENT DECISION)
ON POLICE POLICE CONSTITUTIONAL RIGHTS.
- (iv) THE "STOP & CHECK" POLICY OF MAINTAINING ORDER
THE POLICY MAKER HAS FAILED TO ACT AFFECTIONATELY,
AND HAVE BEEN TO CONTROL THE ECONOMIC, SOCIAL
AND POLITICAL, IT IS CONSIDERATE AND EXTENSIVE
CONSTITUTIONAL RIGHTS IN THE QUESTION OF REINSTATEMENT
OF NATIONAL UNITY, WHICH WAS AID IN 1968,
CONSTITUTIONAL DIFFERENCE IN THE DECISION. IT SHOULD
BE AID IN THE ————— AND MAINTAINING OF THE CONSTITUTION
OF THE NATIONAL UNITY AND A POLITICAL AND

CAUSE OF THE INJURY, AND THE FAILURE OF
THE DEFENDANT TO TAKE THE LACK OF A SUFFICIENT
FORCE DURING THE INJURY AS A FACT.

THE LITIGANT'S REQUEST (THE LITIGANT'S REQUEST)

(i) A JUDGMENT of COMPENSATORY DAMAGES TO PLAINTIFF,
ON AN ACCOUNT TO BE FILED WITHIN 90 DAYS OF THE JUDGMENT.

(ii) A JUDGMENT of PUNITIVE DAMAGES TO PLAINTIFF,
ON AN ACCOUNT TO BE FILED WITHIN 90 DAYS OF THE JUDGMENT
ON THE GROUNDS OF THE DEFENDANT'S
GROSS NEGLIGENCE.

(iii) A JUDGMENT of PUNITIVE DAMAGES TO PLAINTIFF,
ON AN ACCOUNT TO BE FILED WITHIN 90 DAYS OF THE JUDGMENT,
ON THE GROUNDS OF THE DEFENDANT'S
GROSS NEGLIGENCE.

(iv) A JUDGMENT of PUNITIVE DAMAGES TO PLAINTIFF,
ON AN ACCOUNT TO BE FILED WITHIN 90 DAYS OF THE JUDGMENT,
ON THE GROUNDS OF THE DEFENDANT'S
GROSS NEGLIGENCE.

VERIFICATION

I, the undersigned, being duly sworn, depose and say that
the foregoing is a true and correct statement of the facts
and circumstances known to me, and that I believe the
statements are true, and that I believe the statements are
true, and that I believe the statements are true, and that I
believe the statements are true, and that I believe the
statements are true, and that I believe the statements are true.

DATE: June 6, 2012

(1)

CERTIFICATE OF SERVICE

I WHEELER ZACHARY, HEREBY CERTIFY
THAT, I HAVE THIS CERTIFICATE OF THE FOLLOWING:
42 U.S.C. § 1983 CIVIL ACTION, WITH THE FORMER
MAJORITY REQUEST, AS WELL AS I HAVE RECEIVED
INFORMATION, ALL OF WHICH I HAVE RECEIVED FROM A,
COURT OF THE DISTRICT OF COLUMBIA, UNITED STATES
STATES MAIL, PLACED IN THE COURT OFFICE,
FOR THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA. I DECLARE
UNDER PENALTY OF PERJURY THAT THESE ACTIONS
OF MYSELF WERE FILED ON THE 4TH DAY OF
JUNE, 2012.

FILED

OCT 23 2012

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

Michael E. Kunz
MICHAEL E. KUNZ

67271066

FDC MAIL

P.O. Box 562

PHILA, PA. 19105